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SUBJECT: CHONGQING'S IPR ENVIRONMENT: VIEWS FROM THE GOVERNMENT, A CHINESE COMPANY, AND AMERICAN BUSINESSES

REF: A) 09 CHENGDU 300, B) CHENGDU 023

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¶1. (U) This message contains Sensitive But Unclassified information. Not for Internet distribution.

¶2. (SBU) Summary and Comment: Chongqing officials expressed their willingness to cooperate with the USG to further intellectual property rights (IPR) protections during a recent meeting with Consul General, noting the necessity of progress on this front both for attracting international investment, and to protect the long-term interests of Chinese companies. Highlighting the oft-stated goal of building Chongqing into a "model IPR city," they described various strategies toward this end. However, one of Chongqing's largest motorcycle manufacturers seemed unimpressed with official progress, emphasizing the difficulties it faced in resolving IPR issues with other Chinese companies. A group of American business representatives were generally positive regarding municipal government support in IPR violation cases, but regarded pursuit of cases through civil courts as ineffective.

¶3. (SBU) Comment: Post believes that the Chongqing Government, given the forward-leaning commitment to IPR of former Commerce Minister and current Party Secretary Bo Xilai, would be an ideal partner should the Patent and Trademark Office (PTO) seek collaborative partners in southwest China. PTO could also assist the IPR degree program at a local university and recruit local Chinese companies, such as a motorcycle manufacturer Zongshen, as partners lobbying for stronger IP protection. End Summary and Comment.

¶4. (U) During January 12-14 travel to Chongqing, Consul General (CG), Senior Commercial Officer, EconOff and ConOff met with official and business contacts to discuss their views on IPR. This included: 1) a joint meeting with representatives of the Chongqing IPR Bureau, the Trademark Division of the Chongqing Industrial & Commercial Bureau, and the Chongqing Copyright Bureau; 2) a visit to the headquarters of Zongshen Industrial Group, one of Chongqing's major motorcycle manufacturers; and 3) a joint breakfast meeting, coordinated through the American Chamber of Commerce, with the heads of several U.S. companies with Chongqing operations.

Bo Xilai's "IPR model city":

15. (U) Xiang Hu, Vice Director of Chongqing IPR Bureau, recounted that, in April 2009, the government of Chongqing officially started implementing the strategy of Party Secretary Bo Xilai to develop Chongqing into an "IPR model city." Toward this end, they established a leading group for IPR work within the IPR Bureau, headed up by Vice Mayor Tong Xiaoping. Xiang explained that the goal of building Chongqing as a "model IPR city" was to:

-- raise the awareness of entrepreneurs, cadres, scholars, and citizens of Chongqing that "protecting IPR means protecting the economy and development"; --- encourage people to develop more patents and trademarks while respecting others' IPR; and,

-- help domestic companies to understand international IPR issues, and international companies to understand domestic IPR issues.

16. (U) Xiang further elaborated that Chongqing's IPR strategy was comprised of "one key line, two main actions, three structures, and four projects" (yi tiao zhuxian, liang da xingdong, sange jizhi, si da gongcheng). He explained these as follows:

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-- "One key line" refers to the overarching priority placed on IPR as the key to establishing Chongqing as a destination for world-wide investment.

-- "Two main actions" describes the Chongqing government's intent to help the city's companies protect their IPR overseas and, at the same time, help international companies to protect their IPR in Chongqing. To assist Chongqing-based companies, he said, the IPR Bureau was providing information on relevant international conventions, bilateral treaties, etc. and inviting foreign experts to give lectures on IPR. In terms of assistance to individual companies, he noted that they recently assisted the Lifan Group to resolve an IPR issue in the United States.

-- "Three structures" focuses on building an IPR public service structure. First, they are building an IPR data bank for reference by would-be inventors. Second, in 2008 they set up a call center for IPR-related complaints, modeled on the IPR complaint call centers Bo Xilai set up nationwide during his tenure as Minister of Commerce. They did not have statistics for 2009 yet, but reported that they logged 600 calls in 2008, mostly for patent and copyright infringements. They did not provide details regarding what kind of results the hotline produced. Third, they are working to build an IPR "coordinating structure" among the government organizations involved in IPR work.

-- "The four projects" include 1) assisting companies to ensure they gain maximum economic benefits from their own intellectual property; 2) helping key industry groups, such as the motorcycle industry, to develop and protect their patents; 3) helping key

industrial zones with their IPR issues; and 4) educating more IPR talent in Chongqing.

First IPR University Degree Program in China

¶7. (U) On the last point, Xiang reported that in 2007, the city established the nation's first IPR degree program at the Chongqing University of Technology. The program helps to address a national need for improving China's knowledge base on IPR issues, especially since joining the World Trade Organization (WTO). The first group of students will graduate this year, and are expected to have good employment prospects. The program has benefited from cooperation with Japan and Europe, he noted, but so far has had few contacts in the United States. He expressed hope for greater cooperation with U.S. institutions in the future.

Tackling Trademark and Copyright Infringements

¶8. (U) Cheng Qiuxiang, Director of the Trade Mark Section of the Chongqing Industrial and Commerce Bureau, and Xiu Wei from the Law Section of the same Bureau, discussed their trademark-related work. Cheng said that his office actively protected trademarks by working with courts, the Public Security Bureau (PSB), Customs, and the Quality Inspection Bureau. Chongqing also works with 12 other provinces and cities in China's west to protect trademarks, he said. In 2008, the Bureau discovered many problems in the protection of both domestic and international trademarks and the situation got even worse in 2009, he reported. They handled around 1,209 trademark cases over the last two years, many of them related to foreign trademarks, citing Nike, Philips, and Gucci as examples. "We hope that in future all the international companies and foreign countries will help us to protect IPR and conduct investigations on relevant cases in Chongqing," he said.

¶9. (U) Xiu Jiawei, Deputy Coordinator of the Copyright

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Management Section of Chongqing Copyright Bureau, reported that they had, over the last two-three years, been cracking down on copyright violations such as pirated computer software. At the present, he claimed, most government organs and state-owned enterprises are no longer using pirated computer software. They have also been working with major publishing houses in the city, such as Chongqing Publishing Group, to protect copyrights. He asserted that the number of illegal/pirated CDs and DVDs available on Chongqing's streets has gone down significantly over the last few years.

A Chinese Motorcycle Company's Perspective:

Domestic IPR Problems and Center-Provinces Contradictions

¶10. (SBU) Zuo Zongshen, Chairman and President of Chongqing motorcycle giant the Zongshen Group, told Consul General his

company is not currently facing any serious international IPR issues. (In the past, Zongshen had an IPR dispute with Honda, but it was smoothly resolved, he claimed.) However, Zongshen is facing significant domestic IPR problems, including around 20 current violation cases. Zuo said that the domestic cases are difficult to tackle. Although he believes that the policy and legal structure is basically sound, poor implementation is the main challenge. Close links between companies and local governments are the main obstacle he identified, noting that if he sued a company in Guangdong, the Guangdong government would protect it. Likewise, for suits within Chongqing, the government will often ask him to back off due to "shared interests" between the company and government. Therefore, he asserted, "there are many companies in China, particularly military companies and other big state-owned companies, violating my IPR, but it's very hard for me to deal with it."

¶11. (SBU) Zuo went on to say that there are many contradictions between the official IPR policies at the central and local levels, and between official IPR policies and other official policies. "The whole system in China is very complicated and there are a lot of problems," he said, blaming the government for prioritizing gross domestic product (GDP) over IPR protection.

American Businesses: Local Government Support,
Preventive Policies Key to IPR Protection

¶12. (U) During an AmCham-organized breakfast meeting with Consul General, the heads of the Chongqing operations of Briggs & Stratton, Cummins, Visteon, Oracle and Hewlett-Packard discussed their experiences with IPR issues. Those that have been operating in Chongqing for a longer period all reported encountering multiple IPR violations over the years. The more recent arrivals - Visteon and Hewlett-Packard -- said they had not yet encountered any major IPR issues, but fully expect issues to arise as their businesses expand.

¶13. (U) The discussion revealed that, when addressing IPR violations, US companies in Chongqing tend to rely on personal relationships with government officials to solve them, rather than legal structures and procedures. When these companies did decide to pursue court cases, they typically pursued violations through criminal, rather than civil, law channels. This meant first gaining Chongqing government support for their case in order to secure the necessary follow through by the Public Security Bureau to investigate violations. This often took time, they noted, but was generally successful. Cummin's General Manager described the time and effort involved as just the "reality of doing business here." Briggs & Stratton's General Manager noted that, "The government is very powerful and can be helpful" and added that IPR protection for wholly owned foreign enterprises was often more difficult than for joint ventures with strong state-owned enterprise (SOE) partners.

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None reported successful resolution of any cases via civil courts.

¶14. (U) The company representatives also emphasized the importance of setting up comprehensive structures to protect IPR up front. Visteon's General Manager noted that their software algorithms comprise their key proprietary technology, so they

give local engineers access to only the portion of the software needed for their work. All of Briggs & Stratton's current supplier agreements specify Briggs & Stratton ownership of the designs and stipulate steep monetary penalties if parts are sold outside their supply chain (a requirement which suppliers initially balked at, but ultimately signed.) Cummins' General Manager said they invested a lot of time educating their suppliers on what they could and could not do. If Cummins found a supplier selling a proprietary part elsewhere, they simply cut that supplier off, he said. Cummins also emphasized the importance of their legal office in proactively chasing down IPR issues as they arose. A dedicated IPR law specialist in their Beijing office provided support to Cummins, as needed.

IPR Lawyers Face Steep Learning Curve, Low Rewards Says
Chongqing Attorney

¶15. (U) A partner from an attorney's office that has handled IPR cases in Chongqing (and who joined the meeting with US companies) confirmed that filing civil IPR cases was difficult, so that plaintiffs often had to shift to a criminal approach. It was still difficult for lawyers to earn much income from IP cases - she said that those who are specializing in IP work were not happy with their income. She also noted that the IP lawyers faced a steep learning curve, especially when dealing with multiple patents within a single product. Nevertheless, interest in IPR issues was increasing on the part of legal actors, she believed.

Comment: PTO Engagement with Chongqing Officials, University, and Companies; British Consulate on Possible IPR Initiatives

¶16. (U) Post believes that the Chongqing Government, given the forward-leaning commitment to IPR of former Commerce Minister and current Party Secretary Bo Xilai, would be an ideal partner should PTO seek collaborative partners in southwest China. PTO could also consider assisting the IPR degree program at Chongqing University of Technology. Zongshen Motorcycle (septel) and other local Chinese firms might also be recruited as partners in support of stronger IP protection.

¶17. (U) Finally, we note that the British Consul General in Chongqing informed us that their mission is also reviewing possible IPR initiatives in Chongqing. He expressed interest in coordinating with any USG initiatives on this issue.

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